

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

TYRONE HUGES,)	
Plaintiff,)	
)	
v.)	CIVIL NO. 3:13cv61-HEH
)	
FREDERICKSBURG)	
HEALTHCARE, LLC, <i>et al.</i> ,)	
Defendants.)	
_____)	

REPORT AND RECOMMENDATION

The matter is now before the Court for a report and recommendation pursuant to 28 U.S.C. § 636(b)(1)(B) on the Defendants' Motion to Dismiss (ECF No. 4) in which Defendants move to dismiss Plaintiff's Family and Medical Leave Act claims. For the reasons set forth herein, it is the Court's recommendation that Defendants' motion be DENIED as moot.

Plaintiff worked as a Food Service Director for Defendant Carriage Hill. (Amended Complaint "Am. Compl." (ECF No. 12) at ¶¶ 9-10.) When Plaintiff began suffering with anxiety and depression, he took his allowed leave under the Family and Medical Leave Act ("FMLA") to seek treatment. (Am. Compl. at ¶¶ 16, 20, 22.) Plaintiff alleges that Defendants violated the FMLA by terminating Plaintiff from his position just days before he was scheduled to return to work following his FMLA leave. (Am. Compl. at ¶¶ 66-67.) Plaintiff also alleges that his termination served as unlawful retaliation for him taking FMLA leave. (Am. Compl. at ¶ 78.)

On March 1, 2013, Defendant moved to dismiss under Federal Rule of Civil Procedure 12(b)(6), arguing that Plaintiff failed to plead that Plaintiff's termination violated the FMLA, because Plaintiff received all leave that he requested. (Def.'s Mem. in Supp. (ECF No. 5) at 6.)

Because Plaintiff's FMLA unlawful termination claim fails, Defendants argue that Plaintiff's retaliation claim must fail, as this leaves Defendants without a basis for retaliation. (Def.'s Mem. in Supp. at 8.)

On March 21, 2013, Plaintiff filed an Amended Complaint in accordance with Federal Rule of Civil Procedure 15(a). *See* Fed. R. Civ. P. 15(a)(1)(B) ("a party may amend its pleading once as a matter of course within . . . 21 days after service of a motion under Rule 12(b).") Because Plaintiff's Amended Complaint remedies any insufficient pleadings that Defendants challenge in their motion to dismiss, no controversy exists before the Court. Therefore, it is the recommendation of this Court that Defendants' Motion to Dismiss (ECF No. 4) be DENIED as moot.

Let the Clerk file this Report and Recommendation electronically and forward a copy to the Honorable Henry E. Hudson with notification to all counsel of record.

NOTICE TO PARTIES

Failure to file written objections to the proposed findings, conclusions and recommendations of the Magistrate Judge contained in the foregoing report within fourteen (14) days after being served with a copy of this report may result in the waiver of any right to a *de novo* review of the determinations contained in the report and such failure shall bar you from attacking the findings and conclusions accepted and adopted by the District Judge except upon grounds of plain error.

/s/ 

David J. Novak
United States Magistrate Judge

Richmond, Virginia
Date: March 26, 2012